

**EPA Regional UST Enforcement Managers Workgroup**  
**April 9, 2014**  
**Meeting Notes**

**Participants**

OECA - Yolaanda Walker, Brian Joffe, Kim Fedinatz, and Elisabeth Freed

R1 – Joan Coyle  
R2 – William Sawyer  
R3 - Carol Amend  
R4 - Mallory Miller  
R5 – Sherry Kamke  
R6 – Frances Verhalen  
R7 – Wilfredo Rosado-Chaparro  
R8 – Candice?  
R9 – Mimi Newton  
R10 – Katie Griffith

**UST ESA Update (Brian Joffe, OECA)**

Brian thanked the regions for providing comments on the new ESA. His office is working on the signature package and it is close to ready. However an issue raised by Region 4 is requiring a thoughtful analysis. The issue is can we require payment prior to issuing an order under Part 22. There are legal arguments that say we can collect before and there are arguments that say no you have to have an order first before collecting penalties. Office of Civil Enforcement is exploring this issue across multiple programs right now and that is creating a delay on our ESA pilot. There are several options for moving forward. We can go forward with the option to have payment up to 30 days after issuance of the ESA with the additional option or adding stipulated penalties for failure to pay or we can try to work through issues related to collecting payment before we have the order (like what we have for field citations).

Brian questioned each region about its views:

R1 – No comment. Post payment is okay  
R2 It is preferable to have prepayment much like what is done with other ESAs like the lead paint ESA. Don't support options that failure to pay within 30 days would make the ESA null and void.  
R3 –Prepayment is preferred. The idea is to get a transaction in and out quickly. We know when a facility pays that they are serious.  
R4 – Post payment is okay. Position previously articulated to OECA.  
R5 – Prepayment is preferable.  
R6 – All states are delegated so most work done in the region is tribal and the offices are reluctant to issue orders to tribes. Prepayment is better. Post payment is okay.  
R7 – Prepayment is preferable. Wilfredo raised concerns about workload ramifications if

penalties are not received on field citations. Inordinate time and resources spent chasing down violators for penalties. It is difficult to convert ESAs/field citations to complaints. Further discussion about delivery prohibition being a tool when penalty collection is a problem. It is a way to achieve compliance but not penalties.

R8 – No opinion. Region 8 stated that they recover penalties and verify compliance before filing field citations with the RJO.

R9 – Mimi said that they have no problem with prepayment for field citation. No problems getting ESA post payment on the Subtitle C program too. If we go with post payment we should be careful to include language to allow for stipulated penalties (with discretion) up to a certain dollar amount. Mimi tried to find Subtitle C stipulated penalty language in their ESA but couldn't find a good example readily.

R10 – Katie Griffith said that their region gets penalty and full compliance before going to RJO. Prefer prepayment as opposed to post payment.

Brian Joffe said that he would talk to Diana Simes on RCRA C ESA Stipulated penalties to see if there is something we can learn from that.

Brian summarized by saying that he would take this information back to his decision makers. If the package goes with the post payment route, it will do so with the idea that this will be reevaluated. He will go back to the regions before this goes out. The timeframe is expected to be several weeks to months if we pursue the prepayment option. If we go with the post payment option it will move much quicker (a week or so). If you have additional comment, provide them to Yolaanda or Brian.

### **Regional Round Robin**

R1 – Developing an order to deal with an entity with several years of non-compliance. The UST program is working with several other programs. Another case involves a Superfund site with UST on the property. The RPM approached the UST program to address this. The region has a case where a field citation was issued and the owner is going into bankruptcy. The advice Kimi gave was that the region should file a claim in the bankruptcy court and keep the field citation. The program should go through the bankruptcy contact for the region (Eve Valdo). Then go forward with the new owner.

R2 – In February a civil complaint for individuals and several corporate entities (15) was issued for UST violations. This got filled because pre-filing negotiations didn't go anywhere with a recalcitrant entity. Another case was filed and went to default. All documents came back undelivered.

R3 – Working on a judicial consent decree on the Dunkin case. This has liens on the property and penalty amounts at \$3M. This was filed in March and payments are due next month. Another complaint was filed and went to a default motion. EAB – lots of problems with service. Another case is preparing to go to hearing. NJPO has 3 facilities

R4 Ongoing problems with the State of Georgia and their enforcement program. They are down 12 inspectors and maybe 4 more due to cuts in funding. They are up to 150 inspections short a month. Some facilities not inspected in 4 years or more. Region 4 asked if other regions are seeing this.

R5 – Two administrative complaints we are working on. One (Meleen) we completed the CAFO with a nominal penalty of \$500. Another one with the IN Department of Corrections is still in pre-filing negotiations. We are looking at EMS as a SEP.

R6 - Nothing

R7 – No update.

R8 – No update. Just starting field season now.

R9 – Mimi had three cases. The first is the Spill at the Pearl Harbor Naval Hickam Air Force Joint Base in Oahu, Hawaii. This is a field constructed tank with each tank holding about 12.5 M gallons of fuel. Hawaii is the lead. Mimi sent a link to the video at <https://www.youtube.com/watch?v=llz8lstwnWU>. The state is working with Navy to do more to protect drinking water resources.

The second report relates to giving UST inspector credentials to a Native American Coalition.

Seeking information on insurances. You can't send information requests to insurance companies because they are not owners/operators. Some discussion in the region of using Superfund 104 (e) but have to establish broader authority is warranted.

Third item is a question to the regions asking if anyone is tracking site specific charges on LUST sites in order to be able to collect cost recovery on EPA staff time. No region responded affirmatively to this.

R10 – Deborah, the UST attorney left the agency using the VERA/VSIP. There is a new UST attorney (first name?) Bellovary..

**Next workgroup call date is scheduled for June 11th**